

LAW OFFICES  
**JOHN D. HEFFNER, PLLC**  
1750 K STREET, N.W.  
SUITE 200  
WASHINGTON, D.C. 20006  
PH: (202) 296-3333  
FAX: (202) 296-3939

**FEE RECEIVED**

MAY 16 2011

SURFACE  
TRANSPORTATION BOARD

BY HAND

May 16, 2011

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 F Street, S.W.  
Washington, D.C. 20324-0001

ENTERED  
Office of Proceedings

MAY 17 2011

Part of  
Public Record

ENTERED  
Office of Proceedings

MAY 17 2011

Part of  
Public Record



**FILED**

MAY 16 2011

SURFACE  
TRANSPORTATION BOARD

RE: FD 35499, San Luis & Rio Grande Railroad--Continuance-in-Control  
Exemption--Saratoga And North Creek Railway, LLC

FD 35500, - Saratoga And North Creek Railway, LLC-- Acquisition **229521**  
And Operation Exemption- Delaware And Hudson Railway Company,  
Inc. d/b/a Canadian Pacific

FD 35500, Sub-No. 1- Saratoga And North Creek Railway, LLC--  
Operation Exemption--Warren County, NY

Dear Ms. Brown:

On behalf of applicants, San Luis & Rio Grande Railroad and Saratoga And  
North Creek Railway, LLC, I am submitting the following three exemption  
requests:

- (1) FD 35499, a verified notice of exemption pursuant to 49 CFR  
1180.2(d)(2) for San Luis & Rio Grande Railroad to continue in control  
of Saratoga And North Creek Railway, LLC;

(2) in FD 35500, a verified notice of pursuant to 49 CFR 1150.31 for Saratoga And North Creek Railway, LLC to acquire and operate a permanent and exclusive freight easement; and

(3) in FD 35500, Sub-no. 1, a verified notice of pursuant to 49 CFR 1150.31 for Saratoga And North Creek Railway, LLC to operate a line of railroad.

I am including with these filings a copy of each document on a computer diskette as well as two checks totaling \$3200 to cover the requisite filing fees. Because the filing fee for one carrier to control another carrier is slightly higher than that originally anticipated I am including my own check for the additional \$100.

Respectfully submitted,



John D. Hetfner

Enclosures

cc: Mr. Edwin Ellis

ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FD 35500

SARATOGA AND NORTH CREEK RAILWAY, LLC  
—ACQUISITION AND OPERATION EXEMPTION—  
DELAWARE AND HUDSON RAILWAY COMPANY, INC. D/B/A  
CANADIAN PACIFIC



229521

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**VERIFIED NOTICE OF EXEMPTION**  
**PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

U.S. STB  
Office of Proceedings

MAY 17 2011

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Public Record

**FILED**

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**SURFACE  
TRANSPORTATION BOARD** Submitted By:

**FEE RECEIVED**

MAY 16 2011

**SURFACE  
TRANSPORTATION BOARD**

John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 296-3333

Counsel for Petitioner

Dated: May 16, 2011

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35500**

**SARATOGA AND NORTH CREEK RAILWAY, LLC  
—ACQUISITION AND OPERATION EXEMPTION—  
DELAWARE AND HUDSON RAILWAY COMPANY, INC. D/B/A  
CANADIAN PACIFIC**

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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

Saratoga and North Creek Railway, LLC (“Saratoga”), a limited liability company and noncarrier, files this Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D – Exempt Transactions, with the Surface Transportation Board (the “Board”) to permit it to acquire a permanent exclusive freight easement on and to operate about 16.45 miles of railroad line known as the Adirondack Branch from the Seller, the Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific (hereafter “CP”). The subject trackage extends between Adirondack Branch MP 39.44 at or near Saratoga Springs, NY, and Adirondack Branch MP 55.89 at or near Corinth, NY. The assets that Saratoga is acquiring in the subject line are limited to the permanent and exclusive easement for freight railroad purposes and associated common carrier rights and obligations that CP reserved for itself in selling the underlying track and right of way to the Town of Corinth, NY

("the Town"), in a prior *State of Maine*<sup>1</sup> transaction. (The Town, a non-carrier, will continue to own the track and right of way.) Saratoga is also acquiring from CP operating rights for the purpose of interchange between Adirondack Branch MP 39.44 and CP's yard at Saratoga Springs located at Canadian Subdivision MP 35.<sup>2</sup>

### **INFORMATION REQUIRED BY 49 CFR 1150.33**

<u>Name and Address of Applicant</u>	<b>49 CFR 1150.33(a)</b>
Saratoga and North Creek Railway, LLC	
c/o Iowa Pacific Holdings, LLC	
118 South Clinton	
Suite 400	
Chicago, IL 60661	

<u>Applicant's Representative</u>	<b>49 CFR 1150.33(b)</b>
John D. Heffner	
John D. Heffner, PLLC	
1750 K Street, N.W.	
Suite 200	
Washington, D.C. 20006	
(202) 296-3333	

<u>Statement of Agreement</u>	<b>49 CFR 1150.33(c)</b>
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Saratoga is presently negotiating the terms of an agreement with CP covering its acquisition of the permanent and exclusive freight easement and operating rights over that carrier's reserved operating easement, as well as an

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<sup>1</sup> Maine, DOT Acq. Exemption, ME: Central R. Co., 8 L.C.C.2d 835, 836-37 (1991).

<sup>2</sup> The railroad operating easement, common carrier rights and obligations, and the incidental operating rights shall be collectively identified as "the Rail Assets."

agreement with the Town of Corinth for the use of its track and right of way.<sup>3</sup> It anticipates signing these agreements shortly.

Operator of the Property

**49 CFR 1150.33(d)**

Saratoga will provide all common carrier rail operations over the subject Rail Assets.

Brief Summary of Transaction

**49 CFR 1150.33(e)**

Saratoga is a newly established limited liability company and noncarrier organized and wholly owned by San Luis & Rio Grande Railroad ("SLRG"), an existing class III short line railroad. SLRG has formed Saratoga for the purpose of acquiring and operating the Rail Assets. SLRG is a subsidiary of short line railroad holding company, Permian Basin Railways ("PBR"), which owns five other class III noncontiguous short line railroads operating in the United States.<sup>4</sup>

Approximately, six years ago the Town acquired the physical rail assets comprising the subject rail line from CP including the track, right of way, and structures. The Town purchased those assets in order to facilitate the startup of a tourist rail passenger service between the Capital District Transportation Authority Rail Passenger Station in Saratoga Springs and rural areas of abutting Warren

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<sup>3</sup> The agreement with the Town will also cover the use of the adjacent line owned by Warren County.

<sup>4</sup> Iowa Pacific Holdings, LLC, a noncarrier holding company, owns PBR.

County, NY. Because it did not intend to act as a carrier or offer service, the Town sought and obtained a ruling from this Board that its acquisition of those assets did not require Board approval under *State of Maine* and similar precedent. See, The Town of Corinth, NY-Acquisition and Operation Exemption, FD 34803, STB served March 9, 2006. Moreover Saratoga understands that CP has not performed any local freight service over the Adirondack Branch since November 2003.<sup>5</sup>

Other information required

The name and address of the railroad transferring the Rail Assets: The Town will remain the owner of the tracks and right of way. The town's address is

Town of Corinth  
600 Palmer Avenue  
Corinth, New York 12822

(1) The proposed time schedule for consummation of the transaction:

Saratoga intends to consummate this transaction at least 30 days from the effective date of this notice, probably around late June or early July 2011.

The mileposts of the subject property, including any branch lines:

The line extends between Adirondack Branch MP 39.44 at or near Saratoga Springs, NY, and Adirondack Branch MP 55.89 at or near Corinth, NY. In addition, Saratoga will acquire operating rights for the purpose of interchange with

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<sup>5</sup> See, Motion to Dismiss filed by the Town of Corinth in FD 34803 at 1-2.

CP between Adirondack Branch MP 39.44 and CP's yard at Saratoga Springs located at Canadian Subdivisio MP 35.

The total route miles to be acquired and operated:

About 16.45 miles of rail line plus 3.2miles of operating rights for the purpose of interchange.

Related transactions

There are two other transactions related to this filing. First, pursuant to a license from Warren County, Saratoga will berestoring to active common carrier rail service an abandoned line of railroad that the County acquired from CP in 1996. This transaction is described in more detail in FD 35500 Sub-No. 1 filed concurrently with this notice.

Second, inasmuch as Saratoga has been established by and is controlled by SLRG, an existing class III short line railroad subject to the Board's jurisdiction, SLRG is filing simultaneously with this exemption a Notice of Exemption under 49 CFR 1180.2(d)(2) covering this continuance-in-control. FD 35499, San Luis & Rio Grande Railroad-Continuance in Control Exemption—Saratoga and North Creek Railway, LLC

Map

**49 CFR 1150.33(f)**



A map depicting the railroad trackage to be operated is attached as Exhibit A.

Certificate of Carrier Classification    **49 CFR 1150.33(g)**

Saratoga certifies that with this transaction its projected annual revenues will be less than \$5,000,000 annually. A certificate complying with the provisions of 49 CFR 1150.33(g) is attached as Exhibit B to this notice.

Transactions Imposing Interchange Commitments    **49 CFR 1150.33(h)**

Not applicable. The Rail Assets do not physically connect with any active rail line other than that of CP. Consequently, Saratoga will not be able to interchange with any other carriers.

Disclosure of Intent to Transport Waste

Saratoga's license with the Town does not permit the collecting, sorting, loading, unloading, transferring, or transporting of municipal solid waste ("MSW") or construction and demolition ("C&D") material.

Labor Protection

Labor protective conditions are not applicable to transactions under 49 U.S.C. 10901.

Caption Summary    **49 CFR 1150.34**

A caption summary in the prescribed form is attached as Exhibit C to this Notice.

Environmental and Historic Preservation Data      **49 CFR 1105**

Pursuant to 49 CFR 1105.6(c) (2), the proposed transaction is exempt from environmental review under 49 CFR 1105(c) (2) (i), because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required for the parties to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Submitted By:



John D. Heffner, PLLC

1750 K Street, N.W.

Suite 200

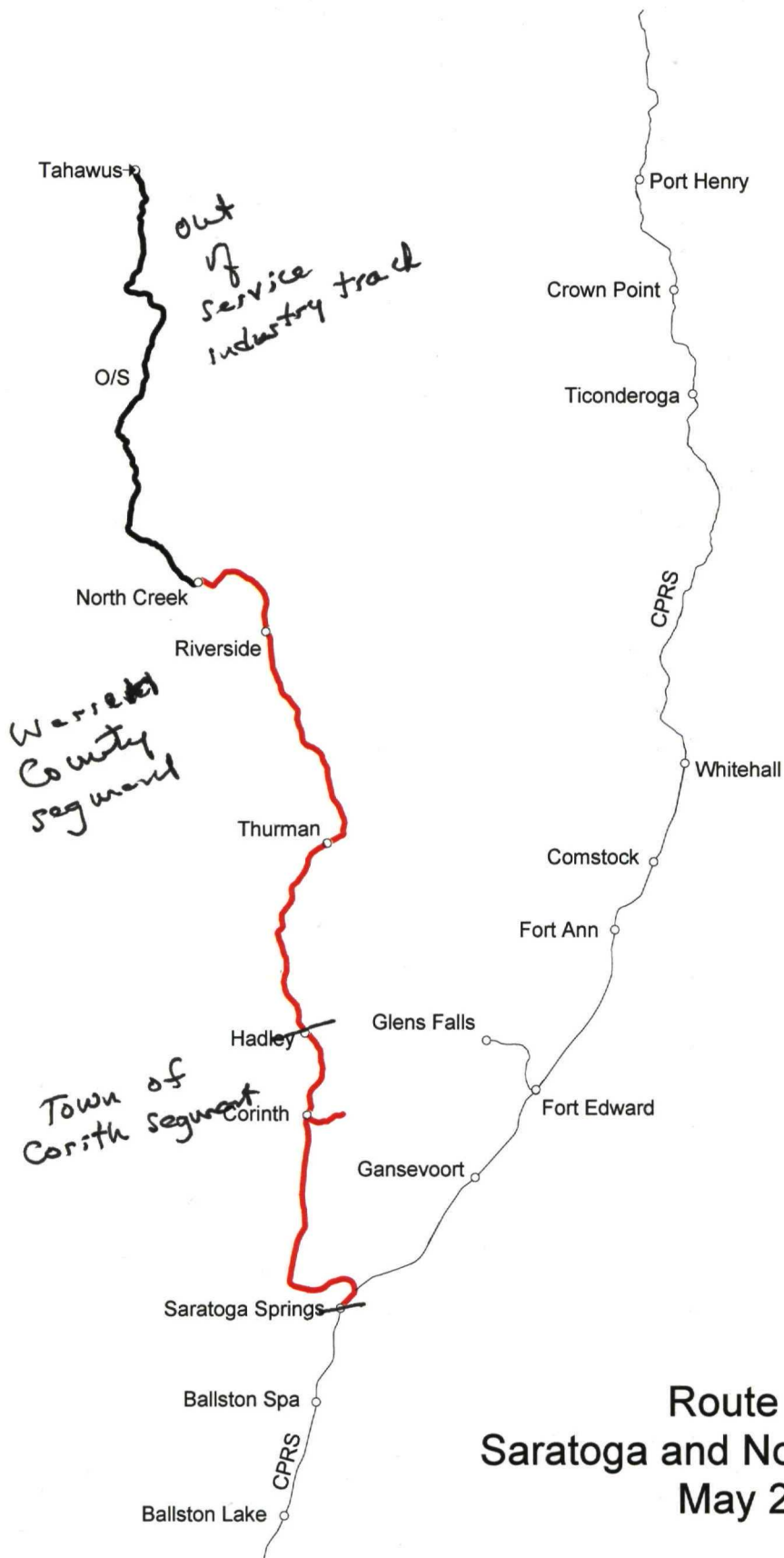
Washington, D.C. 20006

(202) 296-3334

Counsel for Petitioner

Dated:      May 16, 2011

# **EXHIBIT A**



Route Map  
Saratoga and North Creek Rwy  
May 2011

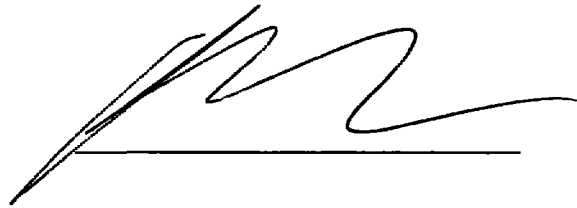
Exhibit B

***Certification***

I, Edwin E. Ellis, certify that I am President of Saratoga & North Creek Railway LLC and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

Dated: April 28, 2011

Signature

A handwritten signature in black ink, appearing to be 'E. Ellis', written over a horizontal line.

**EXHIBIT C**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FD 35500**

**SARATOGA AND NORTH CREEK RAILWAY, LLC  
—ACQUISITION AND OPERATION EXEMPTION—  
DELAWARE AND HUDSON RAILWAY COMPANY, INC. D/B/A  
CANADIAN PACIFIC**

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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 U.S.C. 10901 and 49 CFR 1150.31**

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and associated common carrier rights and obligations that CP reserved for itself in selling the underlying track and right of way to the Town of Corinth, NY (“the Town”), in a prior *State of Maine*<sup>1</sup> transaction. (The Town, a non-carrier, will continue to own the track and right of way). Saratoga is also acquiring from CP operating rights for the purpose of interchange between Adirondack Branch MP 39.44 and CPR’s Saratoga Springs yard at Canadian Subdivision MP 35.

This proceeding is related to two other proceedings. Concurrently with this filing, Saratoga is submitting two other verified notice of exemption: (1) in FD 35499, San Luis & Rio Grande Railroad-Continuance in Control Exemption, San Luis & Rio Grande Railroad, an existing class III short line railroad, seeks an exemption to continue in control of Saratoga and (2) in FD 35500, Sub-No. 1, Saratoga And North Creek Railway, LLC-Operation Exemption-Warren County, NY, Saratoga pursuant to a license granted by Warren County, NY, seeks an exemption to provide common carrier rail service over an abandoned line of railroad that the County acquired from CP in 1996.

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<sup>1</sup> Maine, DOT-Acq. Exemption, ME, Central R. Co., 8 I.C.C.2d 835, 836-37 (1991).

Saratoga certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May \_\_, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD No. 35500, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., John D. Heffner, P.L.L.C. 1750 K Street, N.W. – Suite 200, Washington, D.C. 20006. Telephone: (202) 296-3334; and counsel for CP, W. Karl Hansen, Leonard, Street, and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, (612) 335-7088.

Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).



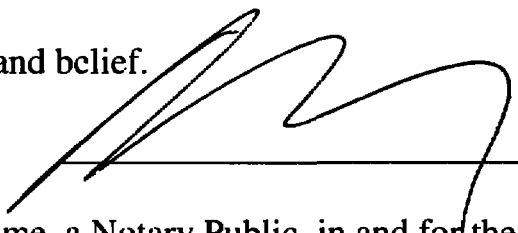
Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.


## VERIFICATION

STATE OF Illinois )  
 )  
CITY OF Chicago ) SS

Edwin E. Ellis, being duly sworn according to law, hereby deposes and states that (s)he is holds the position of President with petitioner, is authorized to make this Verification, has read the foregoing document, and knows the facts asserted therein are true an accurate as stated, to the best of (her) his knowledge, information, and belief.



Subscribed to and sworn to before me, a Notary Public, in and for the City of Chicago in the State of Illinois, this 28 day of April, 2011.

  
Notary Public

My commission expires: Jan 13, 2013

